S.B.CRIMINAL MISC. PETITION NO.1047/2006
(Nadar Singh Vs. Banwari Lal & Anr.)

Date of order : : 02.04.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

REPORTABLE

Mr.Kamal Deep Singh, for the petitioner.
Mr.Ashok Upadhyay, PP for the State.

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

The main contention of the learned counsel for the petitioner is that the complainant in the instant case has been filed on 2.6.1997, whereas cognizance has been taken after expiry of period of limitation i.e. on 11.5.2002 i.e. after expiry of period of one year and hence, continuance of complaint is abuse of process of Court. The learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Apex Court reported in 2003 Cr.L.R.(SC) 802 (Ramesh Chandra Sinha & Ors. V/s State of Bihar & Ors.).

On the other hand, the learned Public Prosecutor stated that the cognizance taken by the learned Magistrate is within limitation and no interference is called for in the impugned order, therefore, the present misc. petition be dismissed.

I have considered the rival submissions made by the learned counsel for the parties and have gone through the record of the case.

In the present case, the complaint was filed on 2.6.1997 and the cause of action has arisen on 24.5.1997 when after notice, the accused has not paid the amount. It is apparent from the record that cognizance was taken by Magistrate on 20.6.97 when the case was fixed for recording of the evidence of the complainant. Moreso the statement of the complainant was also recorded under Section 200 Cr.P.C. on 5.2.98 that was also within limitation. In a complaint case, the position of law is very clear that when Magistrate keeps the case for recording the statements under Section 200 & 202 Cr.P.C., he takes the cognizance of the offence and afterwards he proceed to record the evidence. It is misnomer to say that cognizance was taken on

11.5.2002. By the order dtd.11.5.2002, process has been issued. The order dtd.11.5.2002 cannot be said to be a cognizance order. In these circumstances, the judgment cited by the learned counsel for the petitioner is not applicable to the instant case.

For the reasons mentioned above, the present misc. petition is dismissed. Record of the trial court be sent back forthwith.

(KRISHAN KUMAR ACHARYA), J.

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